

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID PELCHAT,)
)
Plaintiff,)
)
v.)
)
TEREX USA, LLC,)
TEREX CORPORATION, and)
J.J. KANE AUCTIONEERS,)
)
Defendants.)

NOTICE OF REMOVAL

TO: The Chief Judge and Judges of the United States District Court for the
District of Massachusetts

Terex USA, LLC and Terex Corporation (“Defendants”) hereby file this Notice of Removal of the captioned action from the Suffolk Superior Court, Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. In support of its Notice of Removal, Defendants state as follows:

1. The underlying action is one over which the Court has jurisdiction under 28 U.S.C. § 1332 and which may be removed pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.

2. Plaintiff filed his Complaint in the Suffolk Superior Court in the Commonwealth of Massachusetts on November 21, 2018.

3. The Defendants were served with a Summons and copy of the Complaint on January 10, 2019 through their agent for service of process Corporation Service Company (“CSC”).¹ A copy of the Summons and Complaint are attached hereto as Exhibit A.

4. Removal is timely because Defendants have filed this Notice of Removal within thirty (30) days of service of the Summons and Complaint. See U.S.C. § 1446(b).

5. Plaintiff, David Pelchat, avers in the Complaint that he resides in Spencer, Massachusetts. Exhibit A, Complaint ¶ 1.

6. Defendants Terex USA, LLC and Terex Corporation are foreign corporations incorporated under the laws of Delaware, with a principal place of business located at 200 Nyala Farm Road, Westport Connecticut.

7. Defendant J.J. Kane Auctioneers LLC is a foreign limited liability company organized under the laws of New Jersey, with a principal place of business located at 611 Parkside Avenue, Toms River, New Jersey.

8. Accordingly, complete diversity of citizenship exists under 28 U.S.C. § 1332.

9. The amount in controversy exceeds \$75,000, exclusive of interests and costs, because Plaintiff provided a Statement of Damages pursuant to G.L. c. 212, § 3A attached to his Complaint asserting damages in the amount of \$75,000 and Plaintiff also demands damages for lost wages as well as a loss of earning capacity in his Complaint.

10. Defendant J.J. Kane Auctioneers LLC has assented to the removal.

11. Federal jurisdiction exists pursuant to 28 U.S.C. § 1332 because there is complete

¹ J.J. Kane Auctioneers LLC was served with a Summons and Complaint on January 9, 2019. A copy of the Summons is attached hereto as Exhibit B.

diversity of citizenship between the Plaintiff and the Defendants (including J.J. Kane Auctioneers LLC), the amount in controversy exceeds \$75,000 and none of the Defendants are citizens of Massachusetts.

12. Copies of all process, pleadings and orders received by Defendants are attached hereto as Exhibits A and C.

WHEREFORE, Defendants respectfully request removal of the above-captioned matter from the Suffolk County Superior Court, Commonwealth of Massachusetts, to the United States District Court for the District of Massachusetts.

TEREX USA, LLC
TEREX CORPORATION

By its Attorneys,

CAMPBELL CONROY & O'NEIL, P.C.

/s/ David M. Rogers

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Assented to by: J.J. KANE
AUCTIONEERS LLC

By its Attorneys

/s/ Robert A Curley, Jr.

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CERTIFICATE OF SERVICE

On January 31, 2019, I, David M. Rogers, filed electronically and served by mail on anyone unable to accept electronic filing the foregoing document. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ David M. Rogers

David M. Rogers